MASTER AND SERVANT—LIABILITY FOR SERVANTS TORTS—RELATION OF PARTIES.—Defendant, a livery stable keeper, received an order from an undertaker to furnish a number of carriages, horses and drivers to attend funerals, and not having sufficient carriages of his own applied for an additional carriage to another livery stable keeper, who sent one of his drivers with orders to report to the defendant and take his orders. Defendant sent the driver to the undertaker who directed him where to go. Except as the driver was directed to go where defendant ordered, defendant had no control over him. *Held,* that the driver was not defendant's servant, and hence defendant was not liable for his negligence. *Schmedes* v. *Deffaa,* (1912) 138 N. Y. Suppl. 931.

The courts are in conflict upon the question of when a servant in the general employment of one person is, with respect to a particular transaction, the servant of another. In *Pioneer Fireproof Construction Co.* v. *Hansen,* 176 Ill. 100, 52 N. E. 17, the rule is laid down that one cannot be held liable as master, under the doctrine of *respondeat superior,* who does not have power of discharging the party whose negligent act occasioned the injury. In *Standard Oil Co.* v. *Anderson,* 212 U. S. 215, the court says: "In many cases the power of substitution or discharge, the payment of wages, and other circumstances bearing upon the relation are dwelled upon. They however are not ultimate facts, but only those more or less useful in determining whose is the work and whose is the power of control." According to the Illinois rule the decision in the principal case is undoubtedly correct. Under the test of whose business is being done, the decision is wrong; the business was that of the defendant, the general employer of the servant did not undertake to do any part of it or make it his own work. This second test, as to whose business was being done at the time, was applied in *Parkhurst* v. *Swift,* 31 Ind. App. 521; *Delaware Ry. Co.* v. *Hardy,* 59 N. J. L. 35; *Kimball* v. *Cushman,* 103 Mass. 194; *Delory* v. *Blodgett,* 185 Mass. 126. The work being done was that of the defendant, the driver was under his control except so far as the undertaker might direct the course of the journey, the general employer had not undertaken to do the work and the defendant should be liable if his work is negligently done by the agencies he has selected.

MORTGAGES—UNRECORDED, SUPERIOR TO LIEN OF JUDGMENT CREDITOR.—M mortgaged land to plaintiff S in October, 1910, but the mortgage was not recorded until Jan. 27, 1911. On Jan. 11, 1911, defendant bank secured a judgment against M and the same was duly docketed. The statute makes an unrecorded mortgage void as against a subsequent bona fide purchaser. On a foreclosure suit, *Held,* that defendant bank was not a "subsequent purchaser in good faith" and that plaintiff's lien was superior, though defendant's judgment was entered before plaintiff's mortgage was recorded. *Sullivan* v. *Corn Exchange Bank* (1912) 139 N. Y. S. 97.

On this proposition there is a decided conflict of authority. In the following states it has been held that a judgment creditor has a lien on land of his debtor prior to that of an unrecorded, or improperly recorded, mortgage, or other unrecorded, or improperly recorded, alienation or assignment of the

same land, provided the judgment creditor had no notice of the prior existing lien: *DeVendell* v. *Hamilton,* 27 Ala. 156; *Cleveland* v. *Shannon* (Ark.) 12 S. W. 497; *Eldridge, Dunham & Co.* v. *Post,* 20 Fla. 579; *Cabot* v. *Armstrong,* 100 Ga. 438; *Dutton* v. *McReynolds,* 31 Minn. 66; *Miss. Val. Co.* v. *C. St. L. & N. O. R. Co.,* 58 Miss. 846; *Tarboro* v. *Micks,* 118 N. C. 162; *Jackson* v. *Luce,* 14 Oh. 514; *Laurent* v. *Lanning,* 32 Ore. 11; *App. of Lahr,* 90 Pa. 507; *Campbell* v. *Brick Co.,* 75 Va. 291; *Lash* v. *Hordick,* 5 Dill. 505. In the following states the subsequent judgment creditor is not protected against prior unrecorded incumbrance: *Sigworth* v. *Meriam,* 66 Ia. 477; *Swartz* v. *Stees,* 2 Kan. 236; *Righter* v. *Forrester,* 64 Ky. 278; *Vaughn* v. *Schmalsle,* 10 Mont. 186; *Hord* v. *Harlan,* 134 Mo. 469; *Voorhis* v. *Westervelt,* 43 N. J. Eq. 642; *Dawson* v. *McCarty,* 21 Wash. 314. The reason lying behind these decisions is that the recording statute declares that unrecorded mortgages shall be invalid against subsequent *bona fide* purchasers and the judgment creditor is not regarded as such. However a purchaser at a judgment sale would be protected, even in those states. *Jackson* v. *Dubois,* 4 Johns. N. Y. 216; *Albia Bank* v. *Smith,* 141 Ia. 255. See JONES, MORTGAGES, §§ 462-3.

MUNICIPAL CORPORATIONS—EXTENSION OF CITY AS AFFECTING RATE OF FARE ON STREET RAILWAY.—The city of Detroit granted to a street railway corporation the right to lay tracks and operate along certain streets as far as the "city limits" with the right to collect a specified fare; and to construct and operate lines through such other streets as the city and company might later agree upon. The township just beyond the city granted a franchise to this company to extend these lines beyond the city limits and to charge an additional fare on such extension. The territory of the city was later enlarged so as to include much of the extension lines, but the company continued to charge the extra fare. *Held,* that only one fare could be collected within the city limits as extended. *Detroit* v. *Detroit United Railway* (Mich. 1912) 139 N. W. 56.

The terms of franchise under which a street railway operates constitute a contract between the city and the railway and cannot be changed other than by mutual consent. *Shreveport Traction Co.* v. *Shreveport,* 122 La. 1, 129 Am. St. Rep. 345; *Mayor* v. *Houston City St. Ry. Co.,* 83 Tex. 548, 29 Am. St. Rep. 679. Hence the railway cannot be compelled to carry at the prescribed rate for a longer distance than was contemplated at the time of the grant of the franchise. *Minneapolis* v. *Minneapolis St. Ry. Co.,* 215 U. S. 417, 30 Sup. Ct. 118. A general ordinance of a municipality extends to after-acquired territory unless the contrary is expressed or necessarily implied. *Toledo* v. *Edens,* 59 Ia. 352, 13 N. W. 313; *McGurn* v. *Board of Education,* 133 Ill. 122, 24 N. E. 529; and the same rule extends to an ordinance granting a franchise. *St. Louis Gas Light Co.* v. *St. Louis,* 46 Mo. 121. The obligation of a street railway company to carry from any point within the city limits to any other point in the same for a single fare extends to territory later annexed, though a franchise was granted by the public corporation previously controlling such territory allowing the imposition of an extra fare for that territory.